U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 16 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Immigrant Petition for Alien Worker (Form I-140) was initially approved on about July 15, 2006. On further review of the record, the Director (director), of the Nebraska Service Center, determined that the petition was not eligible for approval. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition. The director subsequently revoked approval of the petition on September 18, 2012. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*).

The petitioner described itself as an IT services firm. It sought to permanently employ the beneficiary in the United States as an IT manager. The petitioner requested classification of the beneficiary as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The Form I-140 was initially approved on or about July 15, 2006. Upon subsequent review, the director determined that the petition did not merit approval and sent an Intent to Revoke to the petitioner on April 5, 2012, summarizing his concerns pertinent to the *bona fides* of the Form I-140. The petitioner was allowed 30 (thirty) days to respond to this notice with additional evidence and argument. No response was received from the petitioner.[1] The director revoked the petition's approval on September 18, 2012.

An appeal was filed by the beneficiary through his counsel as indicated by a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, as the beneficiary's representative. Counsel objects to the basis for revoking the petition's approval and asserts that beneficiary must be allowed standing to file an appeal or else would be deprived of any opportunity to avail himself of the statutory benefits derived from section 204(j) of the Act; 8 U.S.C. § 154(j), as amended by section 106(c) of the American Competitiveness in the Twenty-First Century Act of 2000 ("AC21").[2, 3]

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[1] The beneficiary submitted a response.

[2] This provision states:

> Job Flexibility for Long Delayed Applicants for Adjustment of Status to Permanent Residence – A petition under subsection (a)(1)(D)[since redesignatied section (a)(1)(F)] for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or similar occupational classification as the job for which the petition was filed.

It is herein noted that section 204(j) does not apply to an immigrant visa petition proceedings but to an application for adjustment of status. Neither AC21 nor section 204(j) addresses the question as to whether a beneficiary continues to have legal standing to file an appeal with the AAO, once he has left his employment with the original petitioner. That question is deferred to the Form I-485 adjustment of status adjudication. The AAO has no jurisdiction to adjudicate an appeal of a denial of an adjustment of status application. It is additionally noted that the Eighth, Eleventh Circuit,

Counsel's assertion is not persuasive. The regulation at 8 C.F.R. § 103.3(a)(1)(iii) specifically states in pertinent part:

> (B) For the purposes of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. **It does not include the beneficiary of a visa petition**. (emphasis added)

Further, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states; "An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed." Based on the foregoing, a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, is prohibited from filing an appeal. As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected.

Third, Fifth, and Seventh federal circuit courts of appeal, have held that they do not have jurisdiction to review revocation of immigration proceedings. *See Abdelwahab v. Frazier*, 578 F.3d 817 (8th Cir. 2009); *Sands v. U.S. Dep't of Homeland Security*, 308 Fed. Appx. 418 (11th Cir. 2009); *Jilin Pham, USA, Inc. v. Chertoff*, 447 F.3d 196 (3d Cir. 2006); *Ghanem v. Upchurch*, 481 F.3d 222 (5th Cir. 2007); *El-Khader v. Monica,* 366 F.3d 562 (7th Cir. 2004); *see also Mohammad v. Napolitano*, 680 F. Supp.2d 1, (D.D.C. Cir. 2009).

[3]Alien beneficiaries do not normally have standing in administrative proceedings. *See Matter of Sano,* 19 I&N Dec. 299, 300 (BIA 1985). Alien beneficiaries ordinarily do not have a right to participate in proceedings involving the adjudication of a visa petition, as the petition vests no rights. *See Matter of Ho,* 19 I&N Dec. 582, 589 (BIA 1988). Moreover, there are no due process rights implicated in the adjudication of a benefits application. *See Balam-Chuc v. Mukasey,* 547 F.3d 1044, 1050-51 (9th Cir. 2008); *see also Lyng v. Payne,* 476 U.S. 926, 942 (1986)("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment.").